

**Statement To**  
**Financial Services Committee**  
**United States House of Representatives**

**Testimony on Affordable Housing Preservation  
and Protection of Tenants**

**By Ricky Leung, Secretary**  
**National Alliance of HUD Tenants**  
**June 19, 2008**

**Prepared Statement of Mr. Ricky Leung**  
**Secretary**  
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**Financial Services Committee**  
**Thursday, June 19, 2008**

On behalf of the National Alliance of HUD Tenants (NAHT), I want to thank Chairman Frank, Ranking Member Bachus, and members of the Subcommittee for inviting our testimony today. My name is Ricky Leung. I am an architect by profession and a tenant in project-based Section 8 housing; the President of the Cherry Street Tenant Association in the Lower East Side of Manhattan; and the elected Secretary of the NAHT Board. I also work closely with NAHT's New York affiliates, New York Tenants and Neighbors, the Urban Homesteading Assistance Board (UHAB), and Good Ole Lower East Side (GOLES).

NAHT is the national tenant union representing the 1.7 million families who live in privately-owned, HUD assisted multifamily housing, including the 1.3 million families, elderly and disabled people in apartments receiving project-based Section 8 assistance. The elected NAHT Board represents a membership including voting member tenant groups and areawide coalitions in 23 states.

Since Congress ended the Title VI Preservation Program in 1996, the nation has lost at least 360,000 units of affordable low income housing, through owner conversion to high market rents and/or voucherization by HUD. The Draft Preservation Bill prepared by Committee staff represents a tremendous step toward halting this loss. We commend Chairman Frank and Chairwoman Waters for including virtually all of NAHT's priority concerns in the Draft Bill, especially the no-cost First Right of Purchase in Section 103.

We also thank Representative Velasquez, who represents my District in Manhattan, for filing HR 44, the Troubled Housing reforms now incorporated in Title IV of the Draft Bill. In 1994, Congress gave HUD "flexible authority" to voucher out troubled housing, with little oversight. The nation has since lost 120,000 formerly subsidized apartments through HUD policy decisions. Today, 16,000 families in 122 substandard apartment complexes face foreclosure in New York City alone. Title IV comes back full circle to restoring the vision for preservation of HUD's troubled housing initiated by former Senator Ed Brooke in his Property Disposition Amendments of 1978 and continued by Chairman Frank in the Multifamily Property Disposition Act of 1988. We applaud Representative Velasquez, Chairman Frank and Chairwoman Waters for including these NAHT priorities in the Draft Bill.

NAHT has provided detailed comments to Committee staff. About 90% of the Bill has consensus support among the major stakeholders, including several NAHT priorities (all of HR 44; reform and extension of Enhanced Vouchers for all expiring units; and conversion of Rent Supplement and RAP contracts to Section 8). There is also consensus support for Section 601, the Tenant Technical Assistance provision, which is identical to the language adopted unanimously in HR 3965. We thank Representative Green, Chairman Frank and Ranking Members Bachus and Capito for their leadership on this provision.

Accordingly, my remarks today focus on NAHT's highest priorities for this legislation, namely the Federal First Right of Purchase (Section 103) and Tenant Empowerment provisions (Sections 303, 304 and 305). These priorities have been endorsed by the National Preservation Working Group, but have not been supported by all stakeholders.

## **Federal First Right of Purchase Will Save Our Homes**

I am honored to represent NAHT before you today. For 30 years, I have grown up in the 488 unit Cherry Street Apartment complex in a Section 8 apartment with my two aging parents, whose stable jobs in the garment industry were largely wiped out after 9/11. Cherry Street has provided a secure home for our family, which I largely support while working as an apprentice architect in Manhattan. Neither my parents nor I would be able to survive long paying full rent in the overheated Manhattan market.

The other 487 families in the Cherry Street community are working families, professionals and retirees; old, young, and in between; African American, Caucasian, Asian-American and Latino. We are the diverse New York working and middle class, a microcosm of the City and of the nation. As President of the Cherry Street Tenants Association for the past eight years, I have worked to help our community sustain and thrive in the face of increasing threats from a super hot real estate market.

In 2003, our project-based Section 8 contract was set to expire again after several one year extensions. We were fearful and uncertain what would be the fate of our community, given rapid gentrification and mega development projects in the Lower East Side. Our Tenant Association persuaded our owner to renew under the Mark Up to Market Program, but only for five years. In August 2008, he will decide again what to do. This time around, we are not so certain he will renew: he can likely make far more money converting to speculative rents on unsubsidized units, and it is no longer certain that HUD will honor its obligations to make annual Section 8 payments for a full year.

***Passage of a First Right of Purchase would at least give our Tenant Association and the City a fighting chance to save our homes.***

***By itself, the First Right of Purchase provision would not add to federal costs.*** It would simply allow a City agency, acting alone or on behalf of a nonprofit or tenant organization, to purchase a property at risk of conversion to market housing during a six month window of time, during the owner's One Year Notice period already required by federal law. A preservation purchaser would use current federal subsidy programs such as Mark Up to Market, Low Income Housing Tax Credits, city and state capital grants or loans, and soon the National Housing Trust Fund to buy the property at full market value, while preserving affordable housing for future and current tenants. Agencies awarding funds would ensure that repair needs are met to protect tenants and the buildings.

If a viable purchase plan cannot be assembled in the required time frame, the owner would be free to opt out. In that case, the Draft Bill's provisions for Enhanced Vouchers for all current tenants (including Expiring Mortgage units) would apply.

***The Right of First Purchase framework<sup>1</sup> is similar to the Title II/VI Preservation program, which preserved 90,000 at-risk apartments between 1988 and 1996. Of these, 30,000 apartments were purchased by nonprofit or tenant organizations. Tenants in my building deserve the same opportunity.***

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<sup>1</sup> NAHT has recommended that Section 103 of the Draft Bill be replaced with a more developed version of the First Right of Purchase developed by House Legislative Counsel at the request of Rep. Jose Serrano, with input from NAHT's New York affiliates and the National Housing Law Project. The substantive provisions are the same. We have also recommended that the mandatory provisions of Section 103 precede the voluntary ones in Section 102, with the latter rewritten to be consistent with the Right of First Purchase framework.

## **New York City is Losing Affordable Housing at an Alarming Rate**

Tenants' fears that owners might opt out are unfortunately well founded. As of the end of 2006, fully 27% of New York City's original 119,785 units of privately-owned, subsidized housing have been lost since 1990, and another 18% (21,561 total) were threatened with subsidy loss, according to the Community Services Society (CSS).<sup>2</sup> ***Of the 32,422 units lost so far, 17,911 were in federally subsidized apartments that could have been saved if a First Right of Purchase were in place.*** Needless to say, the City of New York is not building new housing affordable to low income families at anywhere near this rate.

***Since 9/11, the rate of housing loss has spiked dramatically: more than 2/3 of the units lost overall since 1990 have converted since 2001.*** Mitchell-Lama buildings with older, non-Section rent subsidy programs (Rent Supplement and RAP, which are not eligible for Mark Up to Market) have opted out at an alarming rate. By 2004, these trends had spread from high market areas such as the Upper West Side to "medium" market areas in the City, including lower rent areas of Manhattan and the Bronx. In my neighborhood, Land's End I converted to the market rents in 2004. In 2007, the proposed conversion of the 6,000 unit Starrett City complex—the nation's largest HUD subsidized development—was only the most visible example of a much deeper crisis in our city. The new crisis in expiring 40 year HUD mortgages will only accelerate this loss.

***In the wake of the traumas inflicted on New York City in 2001, the loss of more than 54,000 affordable housing units is a crisis which we can neither bear nor ignore.*** The people of our city are still reeling from the after shocks of 9/11. Cherry Street and other subsidized housing developments are home to many of the police, firefighters and health service workers who performed heroically after the 9/11 attacks, as well as many low income and elderly people who simply have no options in the high rental market of New York City.

***Homeland security begins with a home.*** Adoption of a First Right of Purchase is urgently needed to preserve the estimated 20,000 federally subsidized apartments at immediate risk in New York City alone.

## **Predatory Investors Are Driving Up Rents and Destroying Affordable Housing**

***Since 9/11, the destruction of affordable housing has been fueled by an unprecedented surge of speculative investment by large, international private equity firms taking advantage of the declining dollar and market conditions in New York.*** A stone's throw from the World Trade Center, Independence Plaza was lost to a predatory investor who converted to high rent housing in 2004. Since then, 13,000 subsidized apartments have been acquired and deregulated by three predatory equity firms in New York City alone, with no end in sight.

For example, Cammeby's International, a private equity firm based in the Middle East, purchased 10 and 210 Stanton Street in the Lower East Side, not far from where I live, along with 10 other developments totaling 7,458 apartments in New York City. In Harlem, another investor sold 4,000 units of state and HUD subsidized housing for \$300 million (\$79,000 per unit) in May 2005, who then flipped them to a second investment fund managed by Morgan Stanley, for almost \$1 billion (\$250,000 per unit) in 2007. ***The new owner tripled the debt service in a two year period, creating tremendous pressure to replace low income people with higher rent paying tenants.***

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<sup>2</sup> The full CSS report is available on line at [http://www.cssny.org/pdfs/Closing\\_the\\_Door\\_2007\\_Report.pdf](http://www.cssny.org/pdfs/Closing_the_Door_2007_Report.pdf)

City and state agencies in New York have stepped in where they can to review and reject sales of subsidized housing where speculative purchase prices appear unsupportable, but their authority is limited. With pressure from Rep. Velasquez, HUD Secretary Jackson did block the sale at Starrett City for \$220,000 per unit. But not all at-risk properties have HUD mortgages that allow HUD to do this, and HUD has rarely rejected a sale.<sup>3</sup> ***A First Right of Purchase would provide an additional tool to local governments to remove at-risk buildings from the speculative market spiral entirely, with a one time purchase and transfer to socially responsible ownership.***

### **Deregulation Has Resulted in Uncontrolled Speculation and the Loss of Housing**

The explosion of predatory equity speculation in New York's subsidized housing stock is echoed in other high market areas from Boston to San Francisco, Atlanta to Los Angeles, and will soon spread to gentrifying neighborhoods across the country. It is one byproduct of the deregulation of federally subsidized housing since 1996. As in the single family mortgage industry, deregulation and speculation in subsidized multifamily housing have already had hugely negative consequences for affordable housing, low income families and communities.

***Radical deregulation is a strategy that has failed in the mortgage lending, energy, telecommunications, banking, and airline industries in the US and in countries around the globe. It is a failure in the subsidized housing industry as well.*** We have lost too many affordable homes, and many more families are facing the destruction of their communities. It is time to push back with judicious, moderate regulation to save affordable rental housing, as the Committee has recommended for the single family mortgage industry.

The predatory equity crisis poses new challenges for all of us. NAHT's New York affiliates have already met with Committee staff to explore appropriate regulatory controls on US and global lenders and investors to stabilize and protect the market in affordable housing. These ideas should be explored in other legislative vehicles in the near future.

### **The First Right of Purchase is a Modest Regulatory Tool with Ample Precedent**

Meanwhile, a First Right of Purchase would be a limited, no-cost regulatory tool that would enable communities to save at-risk housing. There is ample precedent. ***Besides Title VI, for 20 years Congress has provided a Right of Purchase in the federally subsidized Rural Housing sector, which has worked to preserve this stock from conversion to high market rents.***<sup>4</sup> ***In addition, since 1996 several states, including Illinois, Rhode Island, and Maine have adopted First Right of Purchase statutes.***

In New York City, tenants won Local Law 79, which enacted a First Right of Purchase in the City, based on these statewide models. However, a state trial court struck down the city law due to concerns about preemption conflicts with state and federal laws. Nonetheless, the Court wrote that "the recent sales and proposed sales of major assisted rental housing complexes in this City and the likely devastating impact of those sales on low and moderate-income

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<sup>3</sup> One measure sought by NAHT and included in the Preservation Working Group proposals is a provision mandating that HUD preserve at risk housing when it has discretion to do so. This brief proposal would nonetheless be important to redress the many ways that HUD officials have acted in a manner which undermines, rather than preserves, affordable housing. We were unable to find this proposal in the Draft Bill; since it should be noncontroversial among the HUD stakeholders, we recommend its inclusion in the final bill.

<sup>4</sup> 42 U.S.C. Sec. 1472 (c)

residents of New York may and should function as a wake-up call for the need for immediate action” by other levels of government.

On federal preemption, the Court referred to Section 232 of the now-defunct Title VI program, which expressly preempts state or local laws that regulate rents in buildings that were once eligible for Title VI. Since the original purpose of Section 232—to ensure that appraisals under Title VI reflected unrestricted market value, regardless of local rent control laws—is no longer applicable, this archaic provision should be clarified, limited only to properties that executed a Title VI Plan. More broadly, there is no sound reason why courts should block state and local governments from protecting their own communities, or to do more to preserve affordable housing or to protect tenants than the federal government if they wish. Section 107 of the Draft Bill addresses this concern.

### **The First Right of Purchase Will Save Money with Greater Benefits for At Risk Families**

Congress dismantled Title VI in 1996 due to concerns about excessive costs. But *the federal costs of the current “unregulated” owner choice system usually match or exceed the cost of Title VI, but with none of the benefits.*

Today, an owner who “opts out” receives Enhanced Section 8 Vouchers which pay the full market rent for assisted units, but with no HUD oversight. An owner who chooses to renew under Mark Up to Market likewise is paid full market rents by HUD, for 5 to 20 years, with no requirement to make needed repairs. Either way, HUD pays out a full market rent in subsidies equivalent to what was formerly paid out under Title VI, but with none of the offsetting benefits. *Under Title VI, residents and HUD negotiated major repair programs, permanent affordability, and transfers to nonprofit purchasers and tenant organizations; none of these are required by HUD under either Enhanced Vouchers or Mark Up to Market.*

In fact, short term extensions under Mark Up to Market of five years leave residents and HUD at continued risk that owners will opt out down the road, as is happening in my building in the Lower East Side. *As long as owners have an unrestricted choice to opt out of HUD programs, they will be able to leverage ever-increasing subsidy commitments from HUD--which residents and communities will doubtless support--since the alternative of losing affordable housing is unacceptable.* Owners who opt out likewise trigger Enhanced Voucher costs at least the same or higher the subsidy costs in previously regulated developments. In speculative markets like New York, HUD often pays out artificially inflated subsidies—in effect, taxpayer financed windfall profits—that in turn contribute to the speculative spiral in our neighborhoods, with no public benefits other than preservation of Section 8 housing.

*A First Right of Purchase will save money in the long run by removing subsidized developments from this speculative spiral, lessening owner windfalls, and ensuring that Congress receives guaranteed benefits on its investment of any federal funds such as Section 8 or the National Housing Trust Fund.* Implementing the First Right of Purchase in New York would help stabilize and pull back residential real estate markets from speculative pressures that ramp up prices above true values.

### **HUD Section 8 Budget Crisis Increases Opt Out Risk**

Until recently, project-based Section 8 buildings like my own were less likely to opt out of subsidy programs, due to the Mark Up to Market Program, when compared to buildings receiving Rent Supplement or RAP rental subsidies. We strongly support Section 101 in the

Draft Bill allowing conversion of Rent Supplement and RAP to Section 8 and hence eligibility for Mark Up to Market to increase owner incentives to stay in.

But since last summer, HUD has admitted it is no longer paying owners 12 months subsidy for annual Section 8 contract obligations. Congress has yet to fill what HUD acknowledges is a \$2.4-2.8 billion gap in the project-based Section 8 budget to restore full year payments. Owner representatives have testified before Congress that they are much more likely to opt out of HUD contracts in light of the new funding uncertainty. This risk is particularly great in markets like Manhattan where speculative investors have driven rents to unprecedented levels. According to owner groups, *as many as 500,000 units where Section 8 contract rents are below market levels could be at risk of owner decisions to exit the program.*

### **Federal First Right to Purchase Will Save Housing Nationwide**

The new Section 8 funding uncertainty reinforces the speculative market trends that make the loss of HUD multifamily housing a nationwide crisis. While Mark Up to Market may have slowed the loss of housing since 2000 in some regions, it has by no means stopped it. Private equity firms, global investors, Real Estate Investment Trusts and other speculators have continually eroded the affordable housing stock in high rental markets.

The Committee today will hear about the struggle of Lincoln Place tenants in *Venice, California* against AIMCO, the world's largest residential Real Estate Investment Trust (REIT) and a major speculator in HUD housing. Lincoln Place could have been saved had a First Right of Purchase been in place at the time.

The same can be said about many other AIMCO buildings. For example, take Northwest Terrace and Northlake Terrace in *Dallas*, two AIMCO buildings that once provided a racially integrated community for 472 families. In 1996, the tenants picked a nonprofit to buy both developments under Title VI, but the program ended before the sale could go through. After first promising it had no plans to prepay, AIMCO later reneged and sold to another predatory investor in 2000. Conditions deteriorated, and rents skyrocketed 60-75% as the new owner planned to flip the land for luxury townhouse development. The property is now vacant and being demolished. This tragedy could have been avoided had a First Right of Purchase been in place.

In *Boston*, First Realty Management, which owns several thousand apartments refinanced in the early 1990's with equity take-out loans netting \$46 million for the owners, converted the 540 unit High Point Village complex in August 2006, when the original HUD 40 year mortgage expired. The owner and his family invested only \$120,000 in 1966, netting more than \$90 million in windfall profits by 2006 paid largely by steadily escalating Section 8 subsidies. The owner spurned appeals to at least preserve 320 apartments as Section 8 housing, opting out instead. The City of Boston would have exercised a First Right of Purchase to remove High Point from the speculative market to preserve affordable housing and racial diversity.

In *Hawaii*, a First Right of Purchase would have helped preserve affordability at Kukui Gardens, an 850 unit complex being converted to mostly market housing by the "nonprofit" owner. Hawaii has the second highest rate of Section 8 opt outs in the country, according to the Government Accounting Office (GAO)<sup>5</sup>. NAHT urges improvements to Section 503 of the

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<sup>5</sup> "Project Based Rental Assistance," GAO-07-290, April 2007

Draft Bill to tighten HUD approval requirements for prepayment by nonprofit owners, to avoid scandals like Kukui in the future.

### **Tenant Empowerment Provisions Essential**

NAHT's second priority is the Tenant Empowerment measures included in Title III of the Draft Bill. Along with the urgently needed reactivation of Section 514 funds required by Section 601, these no-cost measures will empower tenants to participate as full partners with HUD to improve and save their homes. These tools will enable tenants to utilize the First Right of Purchase to save at-risk buildings, as NAHT affiliates helped preserve 90,000 apartments under Title II and VI Preservation. They also complement the Troubled Housing reform measures in Title IV of the Draft Bill.<sup>6</sup>

Particularly important are provisions to give tenants Access to Information regarding project budgets and ownership and substandard housing (Section 305 and 306), Third Party Beneficiary Status in HUD contracts with owners (Section 304), and Rent Withholding procedures for substandard housing (Section 303).

***Access to Information (Section 305 and 306).*** The value of transparency regarding use of taxpayer subsidies should be self evident. Project ownership and budget information can help tenants spot waste, fraud and abuse in the use of HUD money in the buildings where we live. Tenants have the greatest stake, and the first hand knowledge, to make sure that public subsidies are used well—these are our homes. ***Only owners and managers who fail to provide quality service and/or have something to hide should raise any objection to empowering tenants with this information.***

Recently in New York City we have had a major victory in preserving at risk housing thanks to our ability to get access to detailed financial information with the help of city and state agencies—including blind rent rolls, operating budgets and proposed sale prices. This information has aided tenants and advocates in getting regulatory agencies to reject speculative sales of subsidized projects at Starrett City and 1520 Sedgwick, known as the “Birth of Hip Hop” building in the Bronx. Tenants are now pursuing resident ownership at 1520 Sedgwick.

But HUD does not now make available project budget information under the Freedom of Information Act (FOIA), outside of a short period when owners apply for rent increases. Amazingly, HUD also refuses to provide REAC inspection scores to “failed” buildings that have been referred to HUD’s Enforcement Center—precisely the buildings where tenant cooperation with HUD should be encouraged the most. The current Administration has adopted a policy of

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<sup>6</sup> There are three additional measures which NAHT has recommended for Title IV of the base bill: (1) encourage HUD to become Mortgage In Possession (MIP) when it has the opportunity to do so, to trigger access to the Mortgage Insurance Fund to pay for major repairs and enable HUD to replace substandard management companies; (2) promote acceptance by HUD of Deeds In Lieu of Foreclosure from owners, as an alternative to often risky foreclosure auctions; and (3) add a provision to Section 405 to ensure continued affordability and tenant participation in the event properties are transferred by HUD to a City agency through the Property Disposition/Foreclosure process. These proposals are in the same spirit of HR 44 and would help improve and preserve troubled housing. The first two have also been recommended by the Preservation Working Group.

NAHT has also made recommendations to increase tenant involvement and minimize abuse in the Section 202 provisions authorizing transfer of project-based Section 8 contracts from one building to another.



withholding any information under the FOIA which might be considered “controversial,” leaving the definition up to local staff. Clear direction by Congress is required to reverse these policies.

***Particularly where public subsidies are concerned, tenants and the public generally should know where our tax dollars are going. Subsidy contracts with owners should not be treated as a secret compact of private information beyond public scrutiny.*** Claims that making project budgets available to tenants will discourage investment and inhibit the effectiveness of preservation owners are contrary to the experience in areas where this information is available from local governments. In fact, as Sedgwick and Starrett City have shown, making information available to the public will enable tenants to encourage, not discourage, investment by preservation purchasers.

***Rent Withholding (Section 303).*** This proposal would allow tenants to withhold rent when there are serious violations of housing quality standards and trigger HUD to withhold as well. It also provides that HUD will conduct an inspection or management review when requested by the local government or a petition signed by not less than 10% of the tenants. This proposal is based on language which passed the House in 1993 or was included in a Senate Floor Managers Amendment, but which was not adopted in final legislation. NAHT has submitted technical amendments to refine Section 303.

Many states allow rent withholding for serious substandard conditions; states like Massachusetts or Ohio report no problems of frivolous litigation, serious controversy or abuse. But Alabama, North Carolina, South Carolina, Louisiana, Georgia, Missouri, Colorado, Oklahoma and Texas are among the states that do not have this right. HUD receivership authority is rarely used and inaccessible to most tenants. ***Rent withholding creates a strong incentive for the owner to repair, and can help save buildings before they deteriorate. Section 303 is a natural complement to Title IV and will enlist tenants as partners with HUD in improving Troubled Housing.***

***Third Party Beneficiary Status (Section 304).*** This proposal would establish tenants and tenant associations as third party beneficiaries in HUD contracts affecting their property. Tenants are listed as third party beneficiaries in Mark-to-Market Use agreements, but not in the Section 8 contract or any other Mark-to-Market documents, such as the Rehab Escrow Deposit Agreement or Mark-to-Market Restructuring Commitments. ***HUD is often slow or too late in enforcing these contracts, leaving tenants to suffer. Adding tenants as third party beneficiaries would give us standing to enforce the contracts.***

One example will illustrate why this proposal is needed. The Texas Tenants Union reports that there is a 100 unit property in Longview, TX called the Jerusalem Apartments that completed HUD’s Mark-to-Market (M2M) program in November 2001. The M2M plan called for \$83,750 to be spent from the Rehab Escrow Account in the first year for new hot water heaters, exterior painting and carpentry, repairs to the water and sewer lines, and other repairs. Another \$48,000 was supposed to be spent from the Reserve Account in the first year to begin replacing windows, furnaces, and appliances. More than two years after M2M approval, none of the improvements had begun. By the fall of 2006, HUD terminated the Section 8 contract and displaced all the families, senior citizens, and disabled tenants. HUD proceeded to foreclose on the property in the fall of 2007, and has scheduled at least three auctions to sell the property, which of course, is now vacant and without subsidies. If the tenants had been able to withhold rent early on, or been a party to the contracts, there likely would have been a better outcome.

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In summary, we urge the Committee to retain and strengthen the critical provisions for a First Right of Purchase and Tenant Empowerment. Along with the less-controversial provisions for Troubled Housing and Enhanced Voucher Reform, conversion of Rent Supplement and RAP to Section 8, extension of Enhanced Vouchers to expiring mortgage units and many others, the Committee has crafted an exciting and comprehensive program that will sustain our homes for decades to come.

When Senator Ed Brooke initiated the principles for preserving at-risk HUD multifamily housing with a maximum of resident and community control in 1977, the privately-owned, HUD multifamily programs serving low income people were relatively new. Senator Brooke understood that a combination of judicious regulation, tenant protection and empowerment was essential to save and improve our homes. We commend the Committee's leadership for crafting a Draft Bill which reaffirms these principles and addresses the new challenges we face today.

We would be happy to provide more information to the Committee upon request. Thank you for developing this legislation and allowing NAHT to submit its views.